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7

8 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 OWEN G. FIORE  
P.O. Box 573  
13 Kooskia ID 83539-0573  
14 (formerly 88 Howard Street #1618  
San Francisco, CA 94105)  
15 Certified Public Accountant  
16 Certificate No. CPA 8367,

17 Respondent.  
18

Case No. AC-2005-41

**DEFAULT DECISION  
AND ORDER**

[Gov. Code §11520]

19 **FINDINGS OF FACT**

20 1. On or about August 23, 2005, Complainant Carol Sigmann, in her official  
21 capacity as the Executive Officer of the California Board of Accountancy, Department of  
22 Consumer Affairs, filed Accusation No. AC-2005-41 against Owen G. Fiore, the Respondent  
23 herein, before the California Board of Accountancy.

24 2. On or about August 13, 1960, the California Board of Accountancy ("Board")  
25 issued Certified Public Accountant Certificate No. CPA 8367 to Respondent. The Certified  
26 Public Accountant Certificate was regularly renewed in an "inactive" status from August 1, 1998  
27 until it expired on August 1, 2002. It was renewed in an "inactive" status on October 25, 2002,  
28 and has remained renewed in an "inactive" status through July 31, 2006.

1           3.       On or about September 1, 2005, Mary Ann Reeves, an employee of the  
2 Department of Justice, served, by Certified and First Class Mail, a copy of Accusation No.  
3 AC-2005-41, Statement to Respondent, Notice of Defense, Request for Discovery, and  
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
5 with the Board, which was 88 Howard Street #1618, San Francisco, CA 94105. On or about  
6 September 21, 2005, the documents described above were returned to the California Department  
7 of Justice, Office of the Attorney General, by the U.S. Postal Service (USPS) marked "Forward  
8 Time Esp Rtn To Send." A copy of the Accusation, the related documents, the Declaration of  
9 Service, and the returned envelope is attached as Exhibit A, and the documents are incorporated  
10 herein by reference.

11           4.       On or about September 23, 2005, Ms. Reeves served, by Certified and First Class  
12 Mail, a copy of Exhibit A, referenced above, to the address indicated by the USPS on the  
13 returned package, that is, P.O. Box 573, Kooskia ID 83539-0573. The green Certified Mail card  
14 was returned to the California Department of Justice, Office of the Attorney General, by the  
15 USPS, with the "Received" block signed by Mary Ann Fiore on September 26, 2005. A copy of  
16 the Accusation, the related documents, the Declaration of Service, and the green Certified Mail  
17 card is attached as Exhibit B and the documents are incorporated herein by reference.

18           5.       In or about early October, 2005, a letter dated October 4, 2005, was received by  
19 Deputy Attorney General Jeanne Werner from Respondent, who is presently incarcerated at the  
20 Federal correctional facility at Lompoc, California. A copy of the letter was forwarded to the  
21 Board's Licensing Division with a request that it be treated as a request for a change of address  
22 of record. The new address of record indicated by Respondent is P.O. Box 573, Kooskia ID  
23 83539-0573. Deputy Attorney General Jeanne Werner's response (dated October 13, 2005) to  
24 the Respondent's letter was first mailed, and subsequently served, on the Respondent at both his  
25 Idaho and Lompoc addresses. DAG Werner's response indicated that the Board would proceed  
26 by default if a Notice of Defense was not received within fifteen days of service (served on  
27 November 7, signed for on November 9 and 10, 2005) of the letter. Respondent's Letter, DAG  
28 Werner's response, and the proof of service documents are attached hereto as Exhibit C and are

1 incorporated herein by reference.

2 6. No Notice of Defense, nor other response or communication from Respondent has  
3 been received.

4 7. Service of the Accusation was effective as a matter of law under the provisions of  
5 Government Code section 11505, subdivision (c).

6 8. Government Code section 11506 states, in pertinent part:

7 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a  
8 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation  
9 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
10 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

11 9. Respondent failed to file a Notice of Defense within 15 days after service upon  
12 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
13 No. AC-2005-41.

14 10. California Government Code section 11520 states, in pertinent part:

15 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
16 agency may take action based upon the respondent's express admissions or upon other evidence  
17 and affidavits may be used as evidence without any notice to respondent."

18 11. Pursuant to its authority under Government Code section 11520, the Board finds  
19 Respondent is in default. The Board will take action without further hearing and, based on the  
20 evidence on file herein, contained in the exhibits hereto and the evidentiary file, finds that the  
21 allegations in Accusation No. AC-2005-41 are true, as follows:

22 A. On September 28, 2004, in *United States of America v. Owen George Fiore*, Case  
23 No. CR 03-0347 VRW, in the U.S. District Court, Northern District of California, Respondent  
24 pled guilty to one felony count of violating 26 U.S.C. § 7201 (Attempt to Evade or Defeat Tax)  
25 for the calendar year 1999.

26 B. Respondent agreed that he had a tax due and owing, that he attempted to evade or  
27 defeat an income tax liability, and that his attempt was willful. At the time of his plea,  
28 Respondent was an attorney licensed to practice law in the State of California and had been

1 engaged in the practice of law since 1962. He maintained a certified public accountant license  
2 but does not practice. His law practice during 1996, 1997, 1998 and 1999 specialized in the  
3 practice of estates and trusts, family business and wealth succession, entity planning including  
4 family partnerships, and included a significant practice in tax litigation.

5 C. Respondent prepared his 1999 federal income tax return and understated the  
6 business receipts from his law practice in the total amount of \$473,978. He also failed to report  
7 certain payments from his partner (partial payment for the law practice and client payments due  
8 him as a sole proprietor as per the partnership agreement). As a consequence, Respondent  
9 reported \$214,828, rather than the correct \$737,422, as his taxable income for 1999, and paid  
10 \$65,184, rather than the correct tax due, \$279,604. Respondent paid additional restitution of  
11 \$301,623 (having previously paid the Internal Revenue Service \$325,000), for a total of  
12 \$626,623 in restitution, which represents the total amount of taxes alleged to have been evaded  
13 for the years 1996, 1997, 1998 and 1999.

14 12. California Business and Professions Code section 5107(j) provides:

15 “(1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit  
16 or certificate of any holder who has failed to pay all of the costs ordered under this  
17 section.

18 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew  
19 or reinstate for a maximum of one year the permit or certificate of any holder who  
20 demonstrates financial hardship and who enters into a formal agreement with the board to  
21 reimburse the board within that one-year period for those unpaid costs.”

22 13. The Board's records and billing information obtained from the Attorney General's  
23 Office reflect that its reasonable costs for investigation and enforcement of this matter are  
24 \$ 4,972.10 as of December 29, 2006.

#### 25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact, Respondent Owen G. Fiore has subjected  
27 his Certified Public Accountant Certificate No. CPA 8367 to discipline.

28 2. A copy of the Accusation, Declarations of Service and related documents are  
attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The California Board of Accountancy is authorized to revoke Respondent's

1 Certified Public Accountant Certificate based upon the following violations alleged in the  
2 Accusation:

- 3 a. Business & Professions Code Section 5100(a) - Conviction of any crime  
4 substantially related to the qualifications, functions and duties of a certified public  
5 accountant or a public accountant. Respondent pled guilty to one felony count of  
6 violating 26 U.S.C. § 7201 (Attempt to Evade or Defeat Tax) for the calendar year  
7 1999 (See paragraph 11.A. above). The felony conviction of income tax evasion  
8 is a crime substantially related to the qualifications, functions or duties of a CPA  
9 within the meaning of Board Rule 99.
- 10 b. Business & Professions Code Section 5100(i) - Fiscal dishonesty or breach of  
11 fiduciary responsibility of any kind. Respondent's income tax evasion constitutes  
12 fiscal dishonesty.
- 13 c. Business & Professions Code Section 5100(j) - Knowing preparation,  
14 publication, or dissemination of false, fraudulent, or materially misleading  
15 financial statements, reports, or information. Respondent's preparation and filing  
16 of his false federal income tax return constitutes the knowing preparation and/or  
17 dissemination of false and/or fraudulent financial information.

18 **ORDER**

19 IT IS SO ORDERED that Certified Public Accountant Certificate No. CPA 8367,  
20 heretofore issued to Respondent Owen G. Fiore, is revoked.

21 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
22 written motion requesting that the Decision be vacated and stating the grounds relied on within  
23 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
24 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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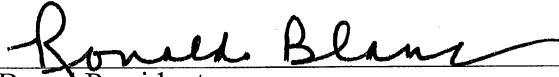
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This Decision shall become effective on February 24, 2006.

It is so ORDERED January 25<sup>5</sup>, 2006.



Board President

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

- Exhibit A: Accusation No. AC-2005-41, Related Documents, and Declaration of Service
- Exhibit B: Re-served Accusation No. AC-2005-41, Related Documents, and Declaration of Service
- Exhibit C: Letter from Respondent and DAG Werner's Response

FD59C316.wpd

DOJ docket number:SF2005200183

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of the State of California  
JEANNE C. WERNER, State Bar No. 93170  
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California Department of Justice  
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Attorneys for Complainant

**BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2005-41

**ACCUSATION**

OWEN G. FIORE  
88 Howard Street #1618  
San Francisco, California 94105

Certified Public Accountant Certificate  
No. CPA 8367,

Respondent.

Complainant alleges:

**PARTIES AND JURISDICTION**

1. Complainant Carol Sigmann brings this Accusation under the authority of Section 5100 of the Business and Professions Code,<sup>1</sup> solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about August 13, 1960, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 8367 to Owen G. Fiore. The Certificate, subject to renewal every two years (on August 1 of even-numbered years) pursuant to Code

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1. All statutory references are to the Business and Professions Code unless otherwise indicated.

1 Section 5070.5, had been renewed, at some time on or before March 1989<sup>2</sup>, in an inactive<sup>3</sup> status  
2 until its expiration on July 31, 1990. Since that date, the Board's records have reflected the  
3 status of the certificate as follows:

4 A. Expired (and not valid for practice) from August 1, 1990 through August  
5 21, 1990, then renewed in an "inactive" status from August 22, 1990 through July 31, 1992.

6 B. Expired from August 1, 1992 through November 29, 1992, then renewed  
7 in an "inactive" status from November 30, 1992 through July 31, 1994.

8 C. Expired from August 1, 1994 through August 26, 1994, then renewed in  
9 an "inactive" status from August 27, 1994 through July 31, 1996.

10 D. Expired from August 1, 1996 through August 18, 1996, then renewed in  
11 an "inactive" status from August 19, 1996 through July 31, 1998.

12 E. The Certified Public Accountant Certificate was regularly renewed in an  
13 "inactive" status from August 1, 1998 until it expired on August 1, 2002. It was renewed in an  
14 "inactive" status on October 25, 2002, and has remained renewed in an "inactive" status through  
15 July 31, 2006.

16 3. This Accusation is brought before the California Board of Accountancy (Board),  
17 Department of Consumer Affairs, under the authority of the following laws. All section  
18 references are to the Business and Professions Code unless otherwise indicated.

19 4. Section 5100 of the Business and Professions Code provides, in relevant part, that,  
20 after notice and hearing the board may revoke, suspend or refuse to renew any permit or  
21 certificate granted, or may censure the holder of that permit or certificate, for unprofessional  
22 conduct which includes, but is not limited to, one or any combination of the causes specified  
23 therein, including:

24  
25 2. The Board's records were transferred to the DCA's centralized computer system in  
26 March 1989 and, as a result, the underlying documentation related to the license history is  
27 unavailable prior to that date.

28 3. The renewal without required continuing education results in a current but "inactive"  
license, which does not authorize the practice of public accountancy (Board Rule 80).



- 1           5100 (a)       Conviction of any crime substantially related to the qualifications,  
2                           functions and duties of a certified public accountant or a public  
3                           accountant.
- 4           5100(i)       Fiscal dishonesty or breach of fiduciary responsibility of any kind.
- 5           5100(j)       Knowing preparation, publication, or dissemination of false, fraudulent, or  
6                           materially misleading financial statements, reports, or information.
- 7           5.       Under Board Rule 99<sup>4</sup>, a crime or act is substantially related to the qualifications,  
8 functions, or duties of a CPA if, to a substantial degree, it evidences present or potential unfitness  
9 to perform the functions authorized by the licensee's certificate or permit in a manner consistent  
10 with the public health, safety, or welfare.
- 11          6.       Section 5106 provides in pertinent part that a conviction means a plea of  
12 guilty...(and) any action which a board is permitted to take following the establishment of a  
13 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
14 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
15 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
16 Penal Code.
- 17          7.       Pursuant to Code section 118(b), the suspension, expiration, or forfeiture by  
18 operation of law of a license issued by the Board shall not during any period within which it may  
19 be renewed, restored, reissued or reinstated, deprive the Board of its authority to institute or  
20 continue a disciplinary proceeding against the licensee upon any ground provided by law or to  
21 enter an order suspending or revoking the license or otherwise taking disciplinary action against  
22 the licensee on any such ground. Code section 5070.6 provides that an expired permit may be  
23 renewed at any time within five years after its expiration upon compliance with certain  
24 requirements.
- 25          8.       Code section 5107 provides for recovery by the Board of all reasonable costs of  
26 investigation and prosecution of the case, including, but not limited to, attorney's fees. A  
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28       4. Codified at Title 16, California Code of Regulations, section 99.

certified copy of the actual costs, or a good faith estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable costs of investigation and prosecution of the case.

**FOR CAUSES FOR DISCIPLINE**

**First Cause for Discipline - Conviction of a Crime Substantially Related**  
(Bus. & Prof. Code Section 5100(a))

9. Respondent is subject to disciplinary action pursuant to Code section 5100(a) in that, on September 28, 2004, in *United States of America v. Owen George Fiore*, Case No. CR 03-0347 VRW, in the U.S. District Court, Northern District of California, Respondent pled guilty to one felony count of violating 26 U.S.C. § 7201 (Attempt to Evade or Defeat Tax) for the calendar year 1999. Respondent agreed that he had a tax due and owing, that he attempted to evade or defeat an income tax liability, and that his attempt was willful.

10. Among the facts which Respondent agreed, in his Plea Agreement, were true are the following:

A. He is an attorney licensed to practice law in the State of California and has been engaged in the practice of law since 1962. He maintains a certified public accountant license but does not practice. His law practice during 1996, 1997, 1998 and 1999 specialized in the practice of estates and trusts, family business and wealth succession, entity planning including family partnerships, and included a significant practice in tax litigation.

B. He prepared his 1999 federal income tax return and understated the business receipts from his law practice in the total amount of \$473,978. He also failed to report certain payments from his partner (partial payment for the law practice and client payments due him as a sole proprietor as per the partnership agreement). As a consequence, Respondent reported \$214,828, rather than the correct \$737,422, as his taxable income for 1999, and paid \$65,184, rather than the correct tax due, \$279,604.

11. Respondent paid additional restitution of \$301,623 (having previously paid the

1 Internal Revenue Service \$325,000), for a total of \$626,623 in restitution, which represents the  
2 total amount of taxes alleged to have been evaded for the years 1996, 1997, 1998 and 1999.

3 12. On April 12, 2005, Respondent was sentenced to eighteen (18) months in prison,  
4 three years of supervised release, and was ordered to pay a \$25,000 fine (in addition to the  
5 restitution amount referenced herein, which he had paid prior to sentencing).

6 13. Incorporating by reference the allegations in paragraphs 9 through 12,  
7 Respondent's certificate is subject to discipline under Code section 5100(a) in that the felony  
8 conviction of income tax evasion is a crime substantially related to the qualifications, functions  
9 or duties of a CPA within the meaning of Board Rule 99.

10 **Second Cause for Discipline - Fiscal Dishonesty**

11 (Bus. & Prof. Code Section 5100(i))

12 14. Incorporating by reference the allegations in paragraphs 9 through 12,  
13 Respondent's CPA certificate is subject to discipline under Code section 5100(i) in that  
14 Respondent's misconduct constitutes fiscal dishonesty.

15 **Third Cause for Discipline - Knowing Preparation**  
16 **and Publication of False and Fraudulent**  
17 **Financial Statements, Reports, or Information**

18 (Bus. & Prof. Code Section 5100(j))

19 15. Incorporating by reference the allegations in paragraphs 9 through 12,  
20 Respondent's CPA certificate is subject to discipline under Code section 5100(j) in that  
21 Respondent's misconduct constitutes the knowing preparation, publication, and/or dissemination  
22 of false and fraudulent financial statements, reports or information.

23 **OTHER MATTERS**

24 16. Pursuant to Code section 5107, it is requested that the administrative law  
25 judge, as part of the proposed decision in this proceeding, direct Respondent to pay to the Board  
26 all reasonable costs of investigation and prosecution in this case, including, but not limited to,  
27 attorneys' fees.  
28

**PRAYER**

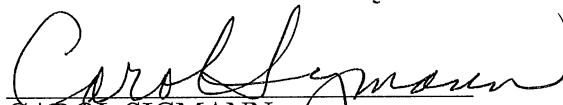
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Certificate Number CPA 8367, issued to Owen G. Fiore;

2. Ordering Owen G. Fiore to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: August 23, 2005.

  
CAROL SIGMANN  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
Complainant

SF2005200183

Fiore accusation.wpd